

## CHAPTER 29

**FORMER SPOUSE PAYMENTS FROM RETIRED PAY**2901 **BACKGROUND**

Public Law 97-252 (reference (ei)), as amended by Public Laws 98-525 (reference (ej)), 99-661 (reference (ek)), and 101-510 (reference (el)), authorizes direct payments to a former spouse from the retired pay of a member in response to court-ordered alimony, child support, or division of property.

2902 **PURPOSE**

This chapter implements procedures to effect the deduction of former spouse payments from retired pay.

2903 **DEFINITIONS**

290301. **Alimony.** Periodic payments for support and maintenance of a spouse or former spouse in accordance with state law under 42 U.S.C. 662(c) (reference (au)). Alimony includes, but is not limited to, spousal support, separate maintenance, and maintenance. Alimony does not include any payment for the division of property.

290302. **Annuitant.** A person receiving a monthly payment under a survivor benefit plan related to retired pay.

290303. **Child Support.** Periodic payments for the support and maintenance of child(ren) subject to and in accordance with state law under 42 U.S.C. 662(b) (reference (au)). Child support includes, but is not limited to, payments to provide for health care, education, recreation, and clothing, or to meet other specific needs of such child(ren).

290304. **Court.** Any court of competent jurisdiction of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and any court of the United States (as defined in 28 U.S.C. 451 (reference (av))) having competent jurisdiction; or any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

290305. **Court Order.** As defined under 10 U.S.C. 1408(a)(2) (reference (c)), a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court-ordered, ratified, or approved property settlement incident to such a decree. A court order includes a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court-ordered, ratified, or approved property settlement incident to such previously issued decree. A court order must stipulate the payment to a member's former spouse of

child support, alimony or division of property. In the case of a division of property, the court order must specify that the payment is to be made from the member's disposable retired pay.

290306. Creditable Service. Service counted towards the establishment of any entitlement for retired pay. See Chapter 1, paragraphs 010102 through 010108, above, 42 U.S.C. 212 for the Public Health Service (reference (au)), and 33 U.S.C. 864 (reference (em)) and 10 U.S.C. 6323 (reference (c)) for the National Oceanic and Atmospheric Administration.

290307. Designated Agent. The representative of a Uniformed Service who will receive and process court orders under this chapter.

290308. Division of Property. Any transfer of property or its value by an individual to his or her former spouse in compliance with any community property settlement, equitable distribution of property, or other distribution of property between spouses or former spouses.

290309. Entitlement. The legal right of the member to receive retired pay.

290310. Final Decree. As defined under 10 U.S.C. 1408(a)(3) (reference (c)), a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

290311. Former Spouse. The former husband or former wife, of a member.

290312. Garnishment. The legal procedure through which payment is made from an individual's pay, that is due or payable, to another party in order to satisfy a legal obligation to provide child support, to make alimony payments, or both, or to enforce a division of property (other than a division of retired pay as property under 10 U.S.C. 1408(d)(5)) (reference (c)).

290313. Renounced Pay. Retired pay to which a member has an entitlement, but for which receipt of payment has been waived by the member.

290314. Retired Member (Retiree). A person originally appointed or enlisted in, or conscripted into, a Uniformed Service who has retired and is now carried on one of the lists of retired personnel from the Regular or Reserve Components of the Uniformed Services.

290313. Retired Pay. The gross entitlement due a member based on conditions of the retirement law, pay grade, years of service for basic pay, years of service for percentage multiplier, if applicable, and date of retirement (transfer to the Fleet Reserve or Fleet Marine Corps Reserve); also known as retainer pay.

290314. Uniformed Services. The Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

2904 ELIGIBILITY OF FORMER SPOUSE

290401. A former spouse is eligible to receive direct payments from a retiree's retired pay if the court order satisfies the requirements and conditions specified for such payment as set forth in this chapter. In the case of a division of property, the court order specifically must provide that payment is to be made from disposable retired pay.

290402. To establish eligibility for a court-ordered division of retired pay as property, the former spouse must have been married to the member for 10 years or more during which time the member performed 10 years creditable service. Court-ordered payments for child support and/or alimony do not require a specified length of marriage.

2905 APPLICATION BY FORMER SPOUSE

★290501. The former spouse must initiate the effective service through notification of the designated agent. The notification is by facsimile or electronic submission, by mail, or by personal service. Effective service is accomplished when a complete application is received by the appropriate designated agent. The designated agent shall note the date and time of receipt on the notification document.

290502. The notification is a signed statement or a signed DD Form 2293 (Request for Former Spouse Payments From Retired Pay) by the former spouse that includes:

A. Notice to make direct payment to the former spouse from the member's retired pay;

B. A certified copy of the court order and other certified accompanying documents, if applicable, that provide for payment of child support, alimony, or division of property;

C. A statement that the court order has not been amended, superseded, or set aside;

D. Sufficient information to identify the retired member so the application can be processed. The identification should give the retiree's full name, social security number, and Uniformed Service;

E. The full name, social security number, and address of the former spouse;

F. Personal agreement, prior to payment, that any future overpayments are recoverable and subject to involuntary collection from the former spouse or his or her estate;

G. Personal agreement, prior to payment, to notify the designated agent promptly if the court order upon which the payment is based is vacated, modified, or set aside. The former spouse also must notify the designated agent upon remarriage if all or part of the payment is

for alimony or of any change in eligibility for child support payments as a result of the child's death, emancipation, adoption, or attainment of majority if payment is for child support.

290503. If the court-ordered division of retired pay as property does not state that the former spouse satisfied the eligibility criteria in section 2904, above, the former spouse must furnish sufficient evidence for the designated agent to verify eligibility.

290504. The designated agent for each Uniformed Service is:

★A. Army, Navy, Air Force, Marine Corps

Director  
DFAS-Cleveland Center  
ATTN: Code L  
PO Box 998002  
Cleveland, OH 44199-8002

Telephone (216) 522-5301

B. United States Coast Guard

Commanding Officer (L)  
Pay and Personnel Center  
444 Quincy Street  
Topeka, KS 66683-3591

C. Public Health Service

Office of General Counsel  
Department of Health and  
Human Service, Room 5362,  
330 Independence Avenue, SW  
Washington, D.C. 20201

D. National Oceanic and Atmospheric Administration

See Coast Guard address.

290505. U.S. Attorneys are not designated agents authorized to receive court orders or garnishments under this chapter.

290506. The designated agent will respond to the former spouse, who makes an application, not later than 90 days after effective service:

A. If the court order will be honored, the former spouse shall be informed of the date that payments tentatively will begin; the amount of each payment; the amount of gross retired pay, total deductions, and disposable retired pay (except in cases where full payment of a court-ordered fixed amount will be made); and other relevant information, if applicable; or

B. If the court order will not be honored, the designated agent shall explain in writing to the former spouse why the court order was not honored.

#### 2906 REVIEW OF COURT ORDERS

290601. The acceptable form of a court order that directs payments to a former spouse shall be:

A. A final decree.

B. Regular on its face. This means the court order is issued by a court of competent jurisdiction in accordance with the laws of that jurisdiction.

C. Legal in form and include nothing on its face that provides reasonable notice that it is issued without authority of law. The court order must be authenticated or certified within the 90 days immediately preceding its service on the designated agent.

290602. If the court order was issued while the member was on active duty and the member was not represented in court, the court order or other court document shall certify that the rights of the member were observed under the 50 App. U.S.C.A., Section 501-591 (reference (en)).

290603. The court order must contain sufficient information to identify the retiree.

290604. Additionally, a court order that stipulates a division of retired pay as property must meet the following conditions:

A. The court must have jurisdiction over the retiree by reason of his or her:

1. Residence, other than because of military assignment, in the territorial jurisdiction of the court;

2. Domicile in the territorial jurisdiction of the court; or

3. Consent by the retiree to the court's jurisdiction.

B. The treatment of retired pay as property solely of the retiree or as property of the retiree and the former spouse of that retiree shall be in accordance with the law of the jurisdiction of such court.

C. The court order or other accompanying documents served with the court order must show that the former spouse was married to the member during 10 years or more of creditable service.

290605. Any court order that awards a division of retired pay as property, which was issued before June 26, 1981, will be honored if it otherwise satisfies the requirements and conditions shown in this chapter. A modification on or after June 26, 1981, of a court order which originally awarded a division of retired pay as property prior to June 26, 1981, may be honored if subsequent court-ordered changes were made for clarification purposes. For example, a subsequent court order may provide a clarifying interpretation of a computation formula that was included in the original court order. For a court order issued before June 26, 1981, a subsequent amendment after that date to provide for division of retired pay as property is unenforceable under this chapter. A court order awarding a division of retired pay as property that is issued on or after June 26, 1981, will be enforced if otherwise satisfying the requirements and conditions in this chapter.

290606. The court order shall require payment of child support or alimony or, in the case of a division of property, specifically provide for the payment of an amount of disposable retired or retainer pay, expressed as a dollar amount or as a percentage. Court orders specifying a percentage or fraction of retired pay shall be construed as a percentage or fraction of disposable retired pay. A court order that stipulates a division of retired pay by means of a formula wherein the elements of the formula are not specifically set forth or readily apparent on the face of the court order will not be honored unless clarified by the court.

★290607. The Secretary of the Military Department concerned (or designee) may refuse service of a court order that is an out-of-state modification and not comply with the court order provisions, unless the court issuing that order has jurisdiction, as shown in paragraph 290604, above, over both the retiree and the spouse or former spouse involved. A court order is considered an out-of-state modification if the court order:

A. Modifies a previous court order upon which payments under this chapter are based; and

B. Is issued by a court of a state other than the state of the court that issued the previous court order.

## 2907 GARNISHMENT ORDERS

290701. If a court order stipulates a division of property other than retired pay in addition to specifying an amount of disposable retired pay to the former spouse, the former spouse may garnish the retiree's retired pay to enforce the division of property. The designated agents authorized to receive service of process shall be those listed in section 2905, above. The amount payable to the former spouse is limited under 15 U.S.C. 1673 (reference (eo)) and section 2908, below.

290702. Garnishment orders for divisions of property, other than retired pay, shall be processed in the manner prescribed in 5 CFR, part 581 (reference (ep)), to the extent that it is consistent with this chapter. (See Chapter 27 of this volume.)

## 2908 LIMITATIONS

290801. Divorces, Dissolutions of Marriage, Annulments, and Legal Separations that Become Effective Before Feb 3, 1991. Upon proper service, a retiree's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount does not exceed:

A. Fifty percent of disposable retired pay for all court orders and garnishment actions paid under this chapter.

B. Sixty-five percent of disposable retired pay for all court orders and garnishments paid under this chapter and garnishments paid under 42 U.S.C. 659 (reference (au)). (See Chapter 27 of this volume.)

290802. Divorces, Dissolutions of Marriage, Annulments, and Legal Separations that Become Effective On or After February 3, 1991. Upon proper service, a retiree's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount paid does not exceed:

A. Fifty percent of disposable retired pay for all court orders and garnishment actions paid under this chapter.

B. Sixty-five percent of the remuneration for employment as defined under 42 U.S.C. 659 and 662 (reference (au)) for all court orders and garnishments under this chapter and garnishments paid under 42 U.S.C. 659 (reference (au)). (See Chapter 27 of this volume.)

290803. Disposable Retired Pay. Disposable retired pay is the gross pay entitlement, including renounced pay, less authorized deductions. Disposable retired pay does not include annuitant payments under 10 U.S.C., Chapter 73 (reference (c)). For court orders issued on or before November 14, 1986 (or amendments to such court orders), disposable retired pay does not include retired pay of a member retired for disability under 10 U.S.C., Chapter 61 (reference (c)). The authorized deductions are:

A. For divorce, dissolution of marriage, annulment, or legal separation that became effective before February 3, 1991:

1. Amounts owed to the United States.
2. Amounts required by law to be deducted from a member's pay.
3. Fines and forfeitures ordered by a court martial.
4. Amounts waived in order to receive compensation under Title 5 or Title 38, United States Code (references (az) and (ar)).

5. Federal employment taxes and income taxes withheld to the extent that the amount is consistent with retiree's tax liability, including amounts for supplemental withholding under 26 U.S.C. 3402(i) (reference (dw)) when he or she presents evidence to the satisfaction of the designated agent that supports such withholding. State employment taxes and income taxes are withheld when the retiree makes a voluntary request for such withholding from retired pay and the Uniformed Services have an agreement with the state concerned for withholding from retired pay.

6. Premiums paid as a result of an election under 10 U.S.C., Chapter 73 (reference (c)), to provide an annuity to a spouse or former spouse to whom payment of a portion of such retiree's retired pay is being made pursuant to a court order under this chapter.

7. The amount of the retiree's retired pay under 10 U.S.C., Chapter 61 (reference (c)) computed using the percentage of his or her disability on the date when he or she was retired (or the date on which his or her name was placed on the temporary disability retired list), for court orders issued after November 14, 1986.

B. For divorces, dissolutions of marriage, annulments, or legal separations that become effective on or after February 3, 1991:

1. Amounts owed to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay.

2. Forfeitures of retired pay ordered by a court martial.

3. Amounts waived in order to receive compensation under Title 5 or Title 38, United States Code (references (az) and (ar)).

4. Premiums paid as a result of an election under 10 U.S.C., Chapter 73 (reference (c)) to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this chapter.

5. The amount of the retiree's retired pay under 10 U.S.C., Chapter 61 (reference (c)) computed using the percentage of his or her disability on the date when the he or she was retired (or the date on which his or her name was placed on the temporary disability retired list).

## 2909 NOTIFICATION OF MEMBER

290901. The designated agent will send a written notice to the affected retiree at his or her last known address no later than 30 days after effective service of a court order or garnishment action described in this chapter.

290902. The notice shall include:



- A. A copy of the court order and accompanying documentation;
- B. An explanation of the limitations placed on the direct payment to the former spouse;
- C. A request that the retiree submit notice to the designated agent if the court order has been amended, superseded, or set aside; (the member must provide an authenticated or certified copy of the court documents when there are conflicting court orders);
- D. The dollar amount or percentage of disposable retired pay that will be deducted if the retiree fails to respond to the notification as prescribed by this chapter;
- E. The effective date that payments to the former spouse will tentatively begin;
- F. A notice that the retiree's failure to respond within 30 days of the date that notification is mailed may result in the payment of retired pay as set out in the notice to the member;
- G. The statement that if the retiree submits information in response to this notification, he or she thereby consents to the disclosure of such information to the former spouse or the former spouse's agent.

290903. The designated agent will consider any response by the retiree and will not honor the court order if it is defective or is modified, superseded, or set aside.

#### 2910 LIABILITY OF THE DESIGNATED AGENT

291001. The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired or retainer pay to any retiree, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made according to this chapter.

291002. Any officer or employee of the United States who, under this chapter, has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him or her in carrying out any of the duties which directly or indirectly pertain to answering such interrogatories.

291003. If a court order on its face appears to conform to the laws of the jurisdiction from which it was issued, the designated agent will not be required to ascertain whether the court had obtained personal jurisdiction over the retiree.

291004. Whenever a designated agent is effectively served with interrogatories concerning implementation of this chapter, the designated agent shall respond to such

interrogatories within 30 calendar days of receipt or within such longer period as may be prescribed by applicable state law.

## 2911 PAYMENTS

291101. Contingent on the retiree's eligibility for retired pay and the effective service of a court order, the Uniformed Service concerned shall start payments to the former spouse not later than 90 days after the date of effective service.

291102. Payments will conform with the normal pay and disbursement cycle for military retired pay.

291103. Payments may be in a fixed-dollar amount or based on a percentage or fraction of disposable retired pay. Payments based on a percentage or fraction will increase in direct proportion with, and at the effective date of future cost-of-living adjustments, unless the court directs otherwise.

291104. Payments terminate on the date of death of the retiree, death of the former spouse or as stated in the court order, whichever occurs first. Payments shall also be terminated or reduced upon the occurrence of a condition under the applicable state or local law that requires termination or reduction.

291105. When several court orders are served on a retiree's retired pay, payments will be satisfied on a first-come, first-served basis within the limitations shown in section 2908, above.

291106. In the event of effective service of conflicting court orders which direct that different amounts be paid during the month to the same former spouse from a given retiree's retired pay, the designated agent will authorize payment on the court order directing payment of the least amount. The difference in amounts will be held by the designated agent pending resolution by the court with jurisdiction or by agreement of the parties. The amount held will be paid as provided in a subsequent court order or agreement. The total of payments released and moneys held will be within the limitations of section 2908, above.

291107. The designated agent shall comply with a stay of execution issued by a court of competent jurisdiction and shall suspend payment of disputed amounts pending resolution of the issue.

291108. When service is made and the identified retiree is found not to be currently entitled to payments, the designated agent shall advise the former spouse that no payments are due from or payable by the Uniformed Service to the named individual. If the member is on active duty when service is accomplished, the designated agent shall retain the application until the member's retirement. In such case, payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the retiree first becomes entitled to receive retired pay. If the retiree becomes entitled to receive retired pay more than 90 days after first being notified under

section 2909, above, the notification procedures prescribed above shall be repeated by the designated agent.

291109. If net pay is only temporarily exhausted or otherwise unavailable, the former spouse shall be fully advised of the reason or reasons why and for how long such funds will be unavailable. Service shall be retained by the designated agent and payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the retiree becomes entitled to receive retired pay. If the retiree becomes entitled to receive retired pay more than 90 days after first being notified under section 2909, above, the notification procedures prescribed above shall be repeated by the designated agent.

291110. If the gross amount of retired pay is not sufficient to cover all authorized deductions and collections, refer to the order of precedence for disbursement in the Treasury Financial Manual for Guidance of Departments and Agencies (reference (eq)). The court-ordered payments to a former spouse will be enforced over other voluntary deductions and allotments from retired pay.

291111. Payments to the former spouse are prospective in terms of the amount stated in the court order and arrearages will not be considered in determining the amount payable from retired pay.

291112. No right, title, or interest that can be sold, assigned, transferred, or otherwise disposed of including by inheritance, is created under this chapter.

291113. The former spouse may be required to submit a signed certification of continued eligibility upon request of the designated agent. The certification of eligibility for the former spouse will include a notice of a change in status or circumstances that affects eligibility. If the former spouse fails or refuses to comply with the certification requirement, payments may be suspended or terminated after notice to the former spouse.

291114. For divorce, dissolution of marriage, annulment, or legal separation that became effective on or after February 3, 1991, payments to a former spouse for a division of property are excluded in determining a retiree's gross wages concerning retired pay.

## 2912 RECONSIDERATION

A retiree or a former spouse may request that the designated agent reconsider the designated agent's determination in response to service of an application for payments under this chapter or the member's answer to the designated agent with respect to notice of such service. For reconsideration, the request must express the issues that the retiree or the former spouse believes were incorrectly resolved by the designated agent. The designated agent shall respond to the request for reconsideration, giving an explanation of the determination reached.